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BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to investigate the audit requirements related to the Nebraska Universal Service Fund.	)))))	Application No. NUSF-33 / PI-68 PROGRESSION ORDER NO. 4

Comments of
The Rural Independent Companies

I. Introduction

The Rural Independent Companies (the "Companies")[1] appreciate the opportunity to submit comments responsive to the May 24, 2006, Progression Order (the "Order") of the Nebraska Public Service Commission (the "Commission") in the docket referenced above. The Order solicits comments on the Commission staff's proposal to require that every company contributing to the Nebraska Universal Service Fund ("NUSF") be audited as described in Attachment A to the Order.

The staff proposal describes three different sets of audit requirements for Nebraska telecommunications companies based on the amount of a company's annual intrastate revenues subject to NUSF assessment – one set of requirements for companies with such revenues of $1 million or greater, another set for companies with such revenues under $100,000, and another set for companies in between.

Each company with annual NUSF-assessable revenues greater than or equal to $1 million would continue to be subject to the requirements of Chapter 10, Section

[1] Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telco Inc., Consolidated Telecom, Inc., Consolidated Telephone Company, Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc, Hershey Cooperative Telephone Co., K & M Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telecom Inc., and Three River Telco.

003.05 of the Commission's Rules, and would continue to have annual audits of "all information used in determining its assessable revenue"[2] performed by a third party auditor. Each such company currently selects the auditor to perform this work and bears the cost of these audits, and would continue to do so under the staff proposal.

According to the staff proposal, companies with annual NUSF-assessable revenues between $100,000 and $1 million would be required to have a similar audit covering a one-year period performed every three years. Each such company would presumably select its own auditor and would bear the cost of the audit.

Under the staff proposal, companies with annual NUSF-assessable revenue under $100,000 would be required to have a similar audit covering a one-year period performed every five years. For these companies, under the proposal, the Commission would select an auditor to perform audits for all such companies, with the cost of the audits paid by the NUSF.

Finally, the staff proposes that the Commission "reserve the ability to require an audit of any company for any reason without prior notice."[3]

II. The Commission Should Consider Either Using A Term Other Than "Audit" To Refer To These Review Procedures Or Placing A Definition Of "Audit" Into Its Rules.

The Companies note that the Nebraska Telecommunications Universal Service Fund Act (the "NTUSF Act") contains the following statement:

> The commission shall require, as reasonably necessary, an annual ***audit*** of any telecommunications company to be performed by a third-party certified public

[2] *See* Neb. Admin. Code, Title 291, Ch. 10, Sec. 003.05.

[3] *See* Attachment A to Order, para. 4.

> accountant to insure the billing, collection, and remittance of a surcharge for universal service. (Emphasis added.)[4]

The Companies believe the Nebraska Legislature, in adopting this statement containing a qualifying clause to specify the purpose of these "audits" (i.e., "to insure the billing, collection, and remittance of a surcharge for universal service"), intended the word "audit" to have the ordinary, layman's meaning of "a methodical examination or review,"[5] and not the meaning ascribed to the term "audit" by professional accountants who perform such work according to the standards published by the American Institute of Certified Public Accountants ("AICPA") and endorsed by the Nebraska State Board of Public Accountancy.[6] In professional parlance, the term "audit" implies conformance with a comprehensive array of professional standards of conduct in the performance of an investigation of information related to a company's financial statements, for the purpose of ascertaining the fairness with which those financial statements present the company's "financial position, results of operations, and its cash flows."[7]

The scope of work associated with a review of "all information used in determining [a company's] assessable revenue"[8] for NUSF purposes is significantly narrower than that associated with an audit of a company's financial statements. Accordingly, the Companies urge the Commission to consider using, in its Rules, a term other than "audit" when referring to the procedure cited in Neb. Rev. Stat. 86-324(2)(d).

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[4] *See* Neb. Rev. Stat. 86-324(2)(d).

[5] Merriam-Webster Online Dictionary; http://www.m-w.com/home.htm.

[6] *See* Neb. Admin. Code, Title 288, Ch. 5, Sec. 004.02, deeming statements of the American Institute of Certified Public Accountants to be generally accepted.

[7] *See* Responsibilities and Functions of the Independent Auditor, AICPA Statements on Auditing Standards, Section 110, available at http://www.aicpa.org/download/members/div/auditstd/AU-00110.PDF.

[8] *See* Neb. Admin. Code, Title 291, Ch. 10, Sec. 003.05.

In practice, the Commission has accepted reports of independent public accountants on "agreed-upon procedures" to document the nature of the work undertaken for this purpose. The reports indicate the procedures performed and the findings related to each specific procedure. The accountant does not perform an audit or provide an opinion relating to the subject matter or assertion about the subject matter. Therefore, the Companies believe "agreed-upon procedure" is the appropriate language, and recommend that the Commission consider using "agreed-upon procedure" in place of the noun "audit," and the phrase "review according to an agreed-upon procedure" in place of the verb "audit," when crafting Rules pertaining to these procedures.

As an alternative, the Commission could elect to define the term "audit" within Section 003 of its rules pertaining to NUSF remittances. The Companies offer the following as an example of a suitable definition of "audit" in this context:

> For the purposes of this Section, the term "audit" means a review of a company's remittances to the NUSF and a report on same executed by a certified public accountant in conformance with a procedure that has been mutually agreed upon by the Commission and the company whose remittances are to be reviewed.

In the remainder of these Comments, the term "remittance audit" is used to refer to this procedure.

III. Breakpoints Between Company Sizes Should Be Consistently Delineated.

The staff proposal defines the group of mid-sized companies as "more than $100,000.00 in assessable revenue but less than $1 million" and defines the group of small companies as "less than $100,000.00 in assessable revenue." While the chance that a company will have ***exactly*** $100,000.00 in assessable revenue is extremely remote, the

Companies believe the Commission should revise one of these definitions to account for that possibility.

Additionally, while the staff proposal defines the group of large companies as "assessable revenue equal to or greater than $1 million," the current NUSF Rule 003.05 defines the group of companies required to perform remittance audits with the phrase "greater than one million dollars ($1,000,000)." The Companies believe the Commission should adopt and apply consistent boundary descriptions in defining these groups of companies to avoid any gaps, as well as overlaps, between groups.

IV. The Commission Should Consider Reducing the Frequency of Remittance Audits for Smaller Companies.

With an NUSF surcharge less than 7%,[9] any company with assessable revenues under $100,000 will remit less than $7,000 into the NUSF annually. Given that remittances to the NUSF from July 2004 through June 2005 were $61.1 million,[10] this $7,000 represents roughly one one-hundredth of one percent of total remittances to the NUSF. The Companies support the staff's proposal to require companies of this size to perform remittance audits no more than once every five years, but we believe that somewhat larger companies should also be subject to the same periodicity requirement. A company with $500,000 in assessable revenues contributes to the NUSF less than six one-hundredths of one percent of total remittances to the fund. The Companies urge the Commission to consider defining an additional group of companies – whose assessable revenues are between $100,000 and $500,000 – each member of which would be required

[9] We use "less than 7%" to be consistent with the 6.95% surcharge in effect from July, 2004 through June, 2005, during which remittances totaled $61.1 million.

[10] *See* Nebraska Public Service Commission 2005 Annual Report on Telecommunications, Sept. 30, 2005, at p. 49.

to have a remittance audit performed every five years, would select its auditor and would pay the cost of its remittance audit. Companies with assessable revenues between $500,000 and $1 million would then be subject to remittance audits every three years, as described in paragraph 2 of the staff proposal.

V. The Smallest Companies Should Have the Option to Select an Auditor and Pay the Cost of the Remittance Audit.

The staff proposal provides, in paragraph 3, that the Commission would select an auditor to perform the remittance audits of all companies having assessable revenue under $100,000, and that the cost of these remittance audits would be paid from the NUSF itself.[11] The Companies believe the intent of this measure is to reduce the burden on the smallest companies. The Companies believe that the Commission should permit the smallest companies to choose between (1) selecting an auditor and paying for the remittance audit themselves, and (2) operating under the terms of paragraph 3 of the staff proposal. A small company may determine that paying the cost of a remittance audit performed by an accountant who is already familiar with the company's record-keeping practices would be a lesser burden than working with an accountant who charges no fee but who is wholly unfamiliar with the company. If such an option is made available, the Commission should adopt a schedule under which the smallest companies would elect their choice.

VI. The Commission Should Make Provisions For Companies Moving From Group To Group Over Time.

Because companies with varying levels of assessable revenues will be, under the staff proposal, subject to remittance audits in varying years, it is possible that one or more

[11] *See* Attachment A to Order, para. 3.

companies will "move" from one group schedule to another as its assessable revenues rise or fall from year to year. For example, a company whose assessable revenues cause it to be subject to remittance audits every five years may, at some future date, be required to perform remittance audits every three years. The Commission should anticipate this situation by developing procedural rules to specify how such a company's duty to perform remittance audits in a particular year is affected by growth or losses in assessable revenue that put it "over the boundary" between groups. The Companies recommend that part of this procedure include a review by the Commission, in January of each year, of all companies' remittances for the previous calendar year and to notify each company whose assessable revenues for that year would place it in a different group from that with which the company had previously been associated.

VII. The Staff Proposal Regarding Additional Audits Should Correspond With The Statute

Currently, paragraph 4 of the staff proposal reads as follows:

> Notwithstanding the above, the Commission would reserve the ability to require an audit of any company ***for any reason*** without prior notice. (Emphasis added)[12]

The statutory authority granted to the Commission through the NTUSF Act to require NUSF remittance audits is defined in the following sentence of Section 86-324(2)(d) of the Act:

> The commission shall require, as reasonably necessary, an annual audit of any telecommunications company to be performed by a third-party certified public accountant ***to insure the billing, collection, and remittance of a surcharge for universal service***. (Emphasis added)[13]

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[12] *See* Attachment A to Order, para. 4.

[13] *See* Neb. Rev. Stat. 86-324(2)(d).

The statutory language sets forth the reasons the Commission may use to require an NUSF remittance audit. The statute permits an audit "to insure the billing, collection, and remittance of a surcharge for universal service." The Commission's policy should also conform to this language to limit potential challenges to the new policy.

VIII. Conclusion

The Companies appreciate the staff proposal and believe that the general thrust of the current staff proposal – to align the frequency of such remittance audits with the amount of a company's assessable revenues – is appropriate. The Companies request that the Commission review the staff proposal concerning the use of the term "audit," and in defining the boundaries between companies of different sizes. The Companies believe the staff proposal could be improved by defining an additional group of companies with assessable revenues between $100,000 and $500,000 as described above, by offering the smallest companies the option of selecting an auditor and paying the cost, and by prescribing a mechanism under which a company transitions from one group to another as its assessable revenues change from year to year.

Dated: June 30, 2006.

Respectfully submitted,
"THE RURAL INDEPENDENT
COMPANIES":

Arlington Telephone Company,
The Blair Telephone Company,
Cambridge Telephone Company,
Clarks Telecommunications Co.,
Consolidated Telco Inc.,
Consolidated Telcom, Inc.,
Consolidated Telephone Company,
Eastern Nebraska Telephone Company,
Great Plains Communications, Inc.,

Hartington Telecommunications Co., Inc,
Hershey Cooperative Telephone Co.,
K & M Telephone Company, Inc.,
The Nebraska Central Telephone Company,
Northeast Nebraska Telephone Company,
Rock County Telephone Company,
Stanton Telecom Inc., and
Three River Telco

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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of June, 2006, the original and five (5) paper copies, together with an electronic copy, of the foregoing Comments were served upon Andy S. Pollock, Executive Director of the Commission, by hand-delivery.

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James A. Overcash